Guide to the Employment Standards Act

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BRITISH COLUMBIA

Ministry of Skills Development and Labour

Employment Standards Branch

2001

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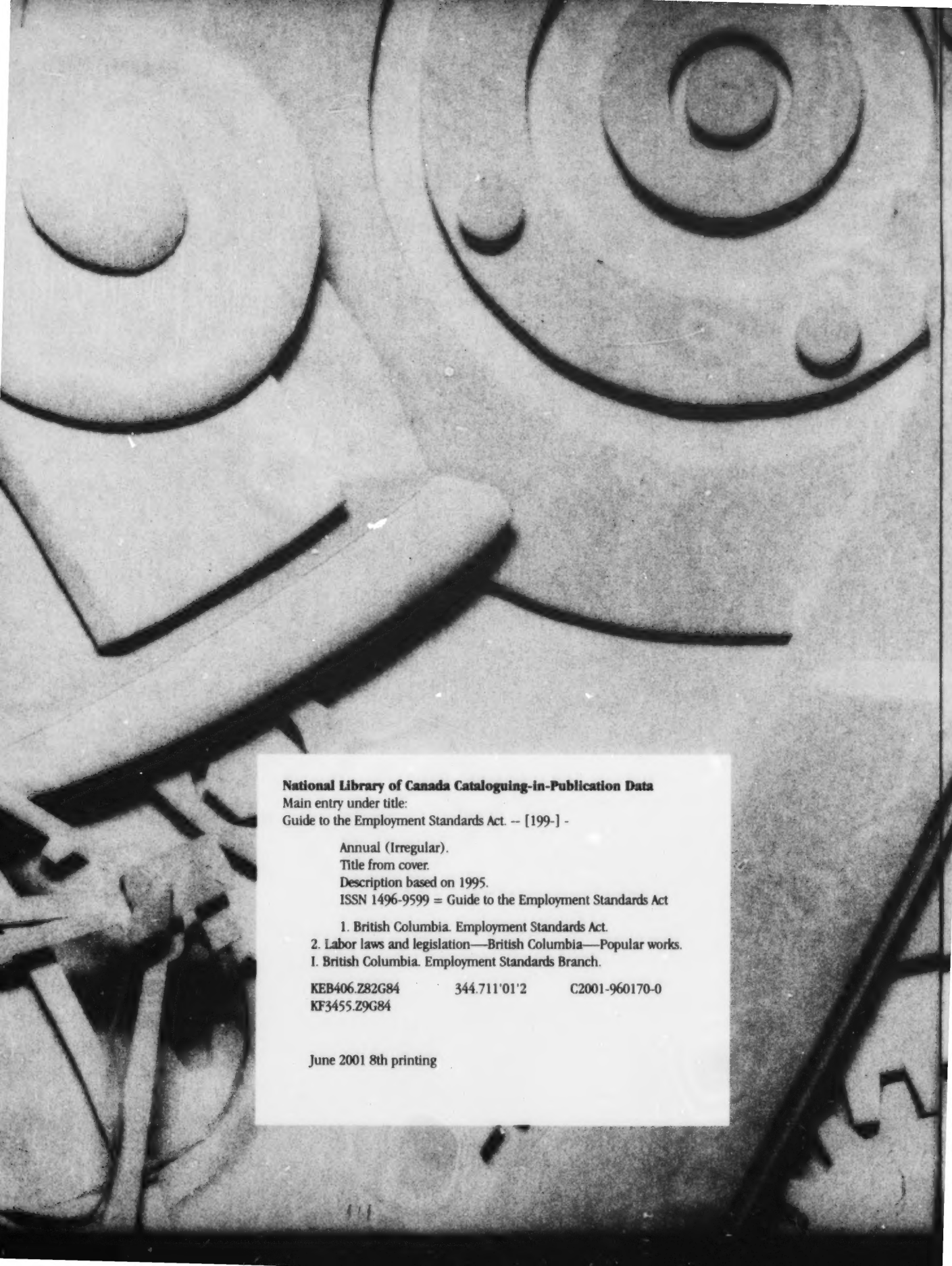

National Library of Canada Cataloguing-in-Publication Data
Main entry under title:
Guide to the Employment Standards Act. -- [199-] -

Annual (Irregular).
Title from cover.
Description based on 1995.
ISSN 1496-9599 = Guide to the Employment Standards Act

1. British Columbia. Employment Standards Act.
2. Labor laws and legislation—British Columbia—Popular works.
I. British Columbia. Employment Standards Branch.

KEB406.Z82G84 344.711'01'2 C2001-960170-0
KF3455.Z9G84

June 2001 8th printing

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INTRODUCTION

Guide to the Employment Standards Act

This guide is a summary of the main topics covered by the *Employment Standards Act* and Regulation. It is intended for general information purposes only. If there are differences between this guide and the legislation, the Act or Regulation applies.

If you have a specific question about the Act or Regulation, you may call our toll-free information line at **1 800 663-3316** or **612-4100** in Prince George. Employment Standards Branch publications and on-line forms may be accessed at **www.labour.gov.bc.ca/esb** on the Internet. You may also visit the local Branch office listed in the back of this guide, or consult a lawyer, labour relations consultant or employment standards consultant. Fact Sheets providing more detail on many of the subjects in this guide are available at the Web site or local Branch offices. A complete list of fact sheets is on the last page of this guide.

We welcome your input on this guide. Please send your comments to the Director of Employment Standards at the Administration Office address on page 30.

CHAPTER 1

What is the Employment Standards Act?

Purposes

The main purpose of the *Employment Standards Act* is to make sure that British Columbia workers receive at least minimum standards of wages and terms of employment.

To accomplish this, the Act establishes certain basic entitlements for employees and obligations for employers. The Act promotes fair treatment of employees and employers, fosters a productive and efficient work force and helps employees meet work and family obligations. The Act also sets up a fair and efficient means of resolving disputes concerning wages, other entitlements under the Act, or agreed terms and conditions of employment which exceed those set out in the Act.

Informing Employees of their Rights

The Act requires employers to display a poster showing employees' rights in each workplace in locations where it can be read by the employees. These posters are available from any Employment Standards Branch office.

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CHAPTER 2

Who is Covered by the Act?

Occupations Covered by the Act

The *Employment Standards Act* applies to most employees and employers in British Columbia. Exceptions include employees whose jobs come under federal jurisdiction and those employees specifically excluded under the Act and Regulation.

The Act applies to both full-time and part-time employees regardless of the number of hours that they work, and to permanent and temporary employees. It also applies regardless of the method used to calculate an employee's wages, i.e., an hourly rate, salary or commission.

Occupations Not Covered by the Act

Some occupations are not covered under the *Employment Standards Act*; for example, doctors, lawyers, architects, dentists, insurance agents, chartered accountants and realtors. Other exclusions include sitters, secondary school students working at their schools, newspaper carriers who attend school and work 15 hours a week or less, and persons receiving financial assistance from government who participate in certain government-sponsored employment programs. A number of other occupations are excluded from coverage under certain specified sections of the Act and Regulation.

For a more complete description of these exclusions, please refer to the Regulation.

Federal Jurisdiction

Federal labour laws cover employees who work in areas of federal jurisdiction. Those employees include employees of the Government of Canada, its Crown Corporations, and the Armed Forces; railways, highway transport, telephone and cable systems, shipping and shipping services and pipelines which operate interprovincially or internationally; radio and television broadcasting including cablevision; air transport; and banks. Employees working in these areas are not covered by the *Employment Standards Act*. For further information, contact Human Resources Development Canada toll-free at **1 800 668-5155** or **1 800 661-1997**.

Unionized Employees

Employees who belong to unions are normally covered by collective agreements negotiated by their union and the employer. Generally speaking, collective agreements must meet or exceed the minimum standards of the Act. If they do not, then the provisions of the Act apply instead. For further information, please contact your local Employment Standards Branch office.

Other Laws

Other provincial statutes such as the *Human Rights Code*, the *Labour Relations Code*, and the *Workers' Compensation Act* affect employees' rights and employers' obligations in the workplace. In addition, Court and Employment Standards Tribunal decisions affect the interpretation and administration of the *Employment Standards Act*.

Minimum Standards

The *Employment Standards Act* sets basic standards for terms and conditions of employment. Employers and employees cannot make an agreement that provides less than these standards. However, in certain circumstances, employers and employees may vary a given standard, with the Director's approval (see Chapter 14 – Variances).

Where an employer and an employee agree to terms of employment which exceed the standards set by the Act or Regulation, the Director enforces compliance with those agreed terms.

CHAPTER 3

Hiring Employees

Human Rights

The *Employment Standards Act* does not require an employer to follow specific procedures when hiring employees. However, the *Human Rights Code* prohibits discrimination in employment advertisements, during employment and when hiring or terminating on the basis of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex (including pregnancy), sexual orientation, age or conviction on a criminal or summary offence unrelated to the employment. For further information contact the B.C. Human Rights Commission toll free at **1-800-663-0876.**

False Representations

An employer may not try to hire a person by misrepresenting that a job is available, the wages to be paid, the type of work to be done, or the terms of employment.

No Charge for Hiring

An employer may not ask for or receive payment (directly or indirectly) from a person in return for hiring that person.

Employment Agencies

An employment agency may not charge a person for obtaining work for that person or for providing information about employers seeking employees.

Employment agencies must be licensed under the Act. Persons wishing to apply for a licence should contact their local Branch office.

Farm Labour Contractors

A farm labour contractor is an employer whose employees work, for or under the control or direction of another person, in connection with planting, cultivating or harvesting of an agricultural product.

A farm labour contractor may not charge a person for hiring or obtaining work for that person, or for providing information about employers seeking employees.

Farm labour contractors must be licensed under the Act. Persons wishing to apply for a licence should contact their local Branch office. The Regulation also sets out requirements for farm labour contractors.

Child Employment

An employer wishing to hire a person under 15 years of age must receive permission from the child's parent or guardian, then approval from the Director before the child starts work. If the child is a student and the work is to be done during the school year, the Director may require the permission of the child's school. If approval to hire the child is given, the Director will issue a permit setting out the conditions of the child's employment.

Application forms are available at Branch offices. The Director investigates each application. This investigation may delay the child's hiring.

Domestic Workers

A domestic worker is an employee who resides and works at an employer's residence, providing cooking, cleaning, or child care services. Domestic workers are entitled to all provisions of the Act, including the hours of work and overtime provisions. Anyone hiring a domestic worker must provide the domestic worker with a written contract setting out the terms of employment. These terms must include the job duties, hours of work, wages, and charges for room and board. Currently, charges for room and board cannot exceed $325 per month.

A domestic worker's employer must register their name, address, telephone number and fax number (if any), and the name of the domestic worker being hired, with the Director within 30 days of the domestic worker starting work. Any changes to this information must be provided to the Director every 6 months. Registration forms are available in each Branch office. Domestic Worker Registration forms should be faxed to 250 387-3310.

CHAPTER 4

Paying Wages

Minimum Wages

As of November 1, 2000, the minimum hourly wage is $7.60, no matter how the wage rate is calculated. As of November 1, 2001, the minimum hourly wage is $8.00. This minimum wage rate applies to youth and trainees. Employees who receive tips are entitled to minimum wage. Gratuities (tips) are not wages.

Minimum wages for live-in home support workers, resident caretakers and farm workers who harvest certain fruit and vegetable crops and flowers are set out in Part 4 of the Regulation.

Paydays

All employees must be paid at least twice a month. A pay period may not exceed 16 days. All money earned in a pay period must be paid within 8 days after the end of the pay period, except vacation pay and wages credited to an employee's time bank (see Chapter 7 – Overtime).

When Employment Ends

When terminated or fired, an employee must be paid in full within 48 hours of the last day of employment. An employee who resigns or quits must be paid in full within 6 days.

If an employee cannot be located, the employer must pay the wages to the Director within 60 days. The Director holds these wages in trust for the employee.

Forms of Payment

Wages must be paid in Canadian currency, by cash, cheque, bank draft or money order, or by direct deposit to an employee's bank account. Payment by direct deposit must be authorized in writing by the employee or by a collective agreement.

Wage Deductions

An employer cannot make deductions from an employee's wages or withhold wages without the written agreement of the employee, unless the deductions are required or permitted by the *Employment Standards Act* or another Act of British Columbia or Canada. Examples of required deductions include those for income tax, Canada Pension Plan and Employment Insurance.

An employee cannot be required to pay any of the employer's business costs, such as damage, breakage or loss. If any such payments or deductions are made, the Director may recover them for the employee.

Wage Deductions Requested by Employees

An employee may request in writing that the employer pay part of his or her wages to a third party. This is called an 'assignment' of wages. An employer *must* pay assigned wages to:

- a trade union under the *Labour Relations Code* (union dues),

- a charitable or other organization,
- a pension or superannuation plan,
- an insurance company for medical or dental coverage, and
- a person to whom the employee is required to pay maintenance under the *Family Maintenance Enforcement Act*.

An employer must also honour an assignment of wages authorized by a collective agreement, and may honour a written assignment by an employee to pay a debt. Assigned wages must be remitted within one month of being deducted.

To cancel an assignment, an employee must notify in writing both the employer and the person or organization being paid.

Employer Payments as a Term of Employment

An employer who agrees as a term of employment to pay an amount on behalf of an employee to a fund, insurer or other person must pay the amount in accordance with the agreement.

Pay Stubs

On paydays, an employer must give each employee a written pay stub for the pay period which includes the following information:

- the employer's name and address,
- the hours worked by the employee,
- the employee's wage rate, whether hourly, salary, flat rate, piece rate, commission or other incentive basis,
- the employee's overtime rate(s),
- the hours worked at the overtime rate(s),
- any money, allowance or other payment the employee is entitled to,
- the amount and purpose of each deduction,
- if the employee is paid other than by the hour or by salary, how the wages were calculated,
- the employee's gross and net wages, and
- any amounts withdrawn from the employee's time bank and how much remains.

A pay stub must be a document separate from an employee's pay cheque which can be retained by the employee if desired.

Once an employer has provided the employee with a pay stub, a new pay stub is not required if the new stub would be the same as the last one.

A pay stub may be provided electronically if requested in writing by an employee or the employee's trade union. An employee or trade union may cancel a request by notifying the employer in writing.

CHAPTER 5

Keeping Records

Payroll Records

The Act requires an employer to keep, in English, for each employee, the following records at its principal place of business in British Columbia:

- the employee's name, date of birth, occupation, telephone number and residential address,
- the date the employment began,
- the employee's wage rate, whether paid hourly, by salary or on some other basis,
- the hours worked each day, regardless of the basis on which the employee is paid,
- the benefits paid to the employee,
- the employee's gross and net wages for each pay period,
- the amount of and reason for each deduction from the employee's wages,
- the dates of the statutory holidays taken by the employee and the amounts paid,
- the dates of the annual vacation taken, the amounts paid, and the days and amounts owing, and
- the dates taken and amounts paid from the employee's time bank, and the balance remaining.

These records must be kept for 5 years after the employee's employment ends.

Flexible Work Schedule Records

If an employer has implemented a flexible work schedule, the employer must keep all records relating to its approval for 5 years (see Chapter 8 – Flexible Work Schedules).

Special Clothing Records

If an employer and a majority of employees have agreed that the employer will reimburse employees for the cost of cleaning and maintaining special clothing, the employer must keep records of the agreement and the amounts paid for 5 years (see Chapter 12 – Special Clothing).

Statutory Holiday Substitution Records

If an employer and a majority of employees have agreed to substitute another day for a statutory holiday, the employer must keep records of this agreement for 5 years.

Employee Records

Although employees are not required by the Act to keep records, the Director encourages employees to write down their hours of work on a daily basis. Such records may help resolve any disagreements over hours worked and wages paid.

CHAPTER 6

Hours of Work

Hours-of-Work Notices

An employer must post notices stating when work starts and ends, when each shift starts and ends, and when meal breaks will occur. These notices must be posted where they can be read by all employees.

Shift Changes

An employer must give an employee 24 hours notice of a change in shift unless the change in shift results in the employee receiving overtime. However, if a shift is extended before it ends, 24 hours notice is not required.

Meal Breaks

An employee should not work more than 5 hours in a row without a half-hour, unpaid meal break. An employee who is required to work or be available for work during a meal break must be paid for the break.

Split Shifts

A split shift must be completed within 12 hours from the start of the shift.

No Excessive Hours

An employer must not require or allow an employee to work excessive hours or hours harmful to the employee's health or safety.

Minimum Daily Pay

An employee who starts work must be paid for at least 4 hours at regular wage, even if the employee works less than 4 hours. However, if work is suspended for a reason completely beyond the employer's control (for example, weather conditions which make working unsafe), the employee must be paid the greater of 2 hours or the actual time worked.

A school student who starts work on a school day (including a "Pro D" day) must be paid for at least 2 hours. On a non-school day, a student who starts work must be paid for at least 4 hours.

Where an employee reports for work but does not actually start working, the employee must be paid for at least 2 hours, unless the employee is unfit to work or does not comply with Workers' Compensation Board health and safety regulations.

Hours Free From Work

An employee must have at least 32 hours in a row free from work each week. If an employee works during this period, the employer must pay double time for the hours worked. For this purpose, a 'week' runs from Sunday through the following Saturday.

An employee is also entitled to have 8 hours off between shifts unless required to work because of an emergency.

CHAPTER 7

Overtime

Overtime

The standard work day is 8 hours and the standard work week is 40 hours. An employee who works more than 8 hours in a day or 40 hours in a week must be paid overtime unless the employer has implemented a flexible work schedule or the Director has granted a variance on the hours worked. Depending on the schedule worked, an employee could be eligible for daily overtime, weekly overtime, or both in the course of a week. However, **daily overtime** and **weekly overtime** are calculated separately (see below). Overtime is payable regardless of the method used to calculate an employee's wages (e.g., hourly, salary, commission).

For purposes of calculating overtime, the work week runs from Sunday through the following Saturday.

Daily Overtime

After working 8 hours in a day, an employee must be paid time and a half for the next 3 hours worked, and double time for all hours worked in excess of 11.

Weekly Overtime

An employee who works more than 40 hours in a week must be paid time and a half for the next 8 hours, and double time for all hours in excess of 48.

Only the first 8 hours worked on each day are used to calculate total hours for weekly overtime. After 8 hours worked in a day, an employee will be entitled to **daily overtime** (see previous section).

In a week in which one or more statutory holidays are taken, the hours which an employee needs to work to be eligible for weekly overtime are reduced by 8 for each holiday taken.

Exceptions

Some employees have different standards for overtime. Long-distance truck drivers are paid overtime after 60 hours in a week at double time, while farm workers are paid overtime after 120 hours in a 2 week period at double time. There is no requirement to pay daily overtime to these employees. Oil and gas field workers are paid daily overtime at time and a half after 8 hours and double time after 12 hours, and weekly overtime at time and a half after 40 hours and double time after 80 hours.

A manager is not entitled to overtime pay, but is required to be paid at straight time rates for all hours worked. Other employees not entitled to overtime pay include teachers, residential care workers, commercial travellers and fishers. A complete list of these excluded occupations is contained in Part 7 of the Regulation.

Banking Overtime in an Employee's Time Bank

At an employee's written request, an employer may establish a time bank and credit the employee's overtime wages to it instead of paying the wages at the time they are earned.

An employee may at any time request the employer to pay out all or part of the wages credited to the bank. The employee may also request time off with pay for some mutually-agreed period, or request in writing that the bank be closed. Upon termination, or upon receiving an employee's request to close the bank, the employer must pay the outstanding balance to the employee.

CHAPTER 8

Flexible Work Schedules

The Act permits an employer to implement certain work schedules under which employees may work more than 8 hours on a given day or 40 hours in a given week without being paid overtime. Called 'flexible work schedules,' they follow repetitive cycles which, over their course, average no more than 8 hours a day or, with one exception, 40 hours a week.

Employees Not Covered by a Collective Agreement

Where employees are not covered by a collective agreement, a flexible work schedule must meet all of the following conditions:

- the schedule must be one of the 5 schedules set out in Appendix 1 of the Regulation,
- the schedule must run for at least 26 weeks,
- the schedule must be approved by at least 65 per cent of the affected employees, and
- the employer must provide the Branch with a copy of the schedule within 7 days of its approval by the employees.

Prior to a schedule being approved by the employees, the Regulation requires the employer to post an information bulletin for 10 days which describes the proposed schedule.

An employer may cancel a flexible work schedule at any time. The Director may also cancel a schedule if a written complaint is received from one of the affected employees, and the Director is satisfied that the employer either did not follow the procedure in the Regulation or unduly influenced, intimidated or coerced any employee to approve the schedule. Unless cancelled earlier, a schedule expires 2 years after it was approved, but may be renewed with the approval of 65 per cent of the affected employees.

Where an employee on a flexible work schedule works more than an average of 8 hours a day or 40 hours a week over the shift cycle, overtime wages must be paid as set out in the Regulation.

Employees Covered by a Collective Agreement

Where employees are covered by a collective agreement, a flexible work schedule must:

- run for at least 26 weeks,
- consist of a shift cycle of days at work and days off work that repeats over a period of up to 8 consecutive weeks,
- allow each affected employee to work during each shift cycle an average of at least 35 and not more than 40 hours per week at the employee's regular wage, and
- have been approved by a trade union representing the affected employees.

Where an employee on a flexible work schedule works more than an average of 8 hours a day or 40 hours a week over the shift cycle, overtime wages must be paid as required by the collective agreement.

CHAPTER 9

Statutory Holidays

Statutory Holidays in BC

A **statutory holiday** is a legal holiday for which employees who qualify (see below) are entitled to a day off with pay. Employees who qualify and work on a statutory holiday are entitled to premium pay ***and*** another working day off with pay.

There are 9 statutory holidays in BC. They are:

- New Year's Day
- Good Friday
- Victoria Day
- Canada Day
- British Columbia Day
- Labour Day
- Thanksgiving Day
- Remembrance Day and
- Christmas Day.

Easter Sunday, Easter Monday and Boxing Day are **not** statutory holidays.

Eligibility

To be entitled to a paid day off on a statutory holiday, or to premium pay for working on a statutory holiday, you must have been employed for at least 30 calendar days.

Vacation days count as days employed when determining entitlement to statutory holiday, and vacation pay counts as wages earned when calculating the amount of statutory holiday pay.

Statutory Holiday Pay

- **An eligible employee with a *regular* schedule of hours** who has worked at least 15 of the 30 calendar days prior to a statutory holiday is entitled to a *regular* day's pay for the holiday.
- **An eligible employee who has worked *irregular* hours** on at least 15 of the 30 days prior to a statutory holiday is entitled to an *average* day's pay for the holiday. To calculate an average day's pay, divide the total wages earned in the 30-day period (excluding overtime) by the number of days worked.
- **An eligible employee who has worked fewer than 15 of the 30 days prior to a statutory holiday** is entitled to *pro-rated* statutory holiday pay. Pro-rated statutory holiday pay is calculated by dividing the total wages earned in the 30-day period (excluding overtime) by 15.

Working on a Statutory Holiday

An eligible employee who works on a statutory holiday must be paid time-and-a-half for the first 11 hours, and double time after 11 hours.

The employee must *also* be given an alternate day off with pay. The pay for this day off is based on the employee's schedule of hours as shown above. The employee may credit the wages

for the alternate day off to his or her time bank, if the employee has one.

The employer must schedule the alternate day off:

- before the employee's annual vacation,
- before the date the employment terminates, or
- within 6 months of the statutory holiday if the wages were credited to the employee's time bank,

whichever is earliest.

Statutory Holiday on a Day Off

Where a statutory holiday falls on a non-working or vacation day for an eligible employee, the employee must be given an alternate day off with pay. This day off must be scheduled and paid as outlined above.

The paid statutory holiday is not considered to be a vacation day.

Statutory Holidays for Those Not Eligible

An employee who is not eligible for the statutory holiday and who works on the holiday may be paid as if it were a regular work day, and is not entitled to an alternate day off.

Exception

A manager is not entitled to statutory holidays or statutory holiday pay.

Substituting Statutory Holidays

Where an employer and a majority of affected employees agree, the employer may substitute another day off for a statutory holiday. The Act and Regulation apply to the substitute day as if it were a statutory holiday.

Statutory Holiday Pay for Piece-rate Farmworkers

If a farmworker is paid on a piece-rate basis, statutory pay is included in the piece rate.

Shifts That Straddle Midnight

All hours worked on a shift that starts on a statutory holiday are deemed to have been worked on the statutory holiday. Conversely, all hours on a shift that started the day before the statutory holiday are deemed not to have been worked on the statutory holiday.

CHAPTER 10

Leaves and Jury Duty

The *Employment Standards Act* requires employers to grant employees the following periods of **unpaid** leave. An employee does not need to work for a specified period to be eligible for leave.

Pregnancy Leave

A pregnant employee is entitled to up to 17 consecutive weeks of unpaid pregnancy leave. This leave may start no earlier than 11 weeks before the expected birth date, and must end no earlier than 6 weeks after the birth date unless the employee requests a shorter period.

A request for pregnancy leave made during the pregnancy must be made in writing at least 4 weeks before the proposed start date.

If pregnancy leave is not requested until after the birth of a child or after termination of the pregnancy, the employee is entitled to up to 6 consecutive weeks of leave beginning on the date of birth or termination date.

An initial period of leave may be extended up to 6 consecutive weeks if an employee is unable to return to work for reasons relating to the birth or termination.

A request to return from leave earlier than 6 weeks from the birth must be made in writing at least one week before the proposed return date.

An employer may require an employee to provide a doctor's certificate in support of a request for leave or a leave extension.

Parental Leave for Birth and Adopting Parents

A birth mother who has taken pregnancy leave is entitled to 35 consecutive weeks of unpaid parental leave. A birth mother must begin her parental leave immediately after her pregnancy leave ends, unless she and the employer agree otherwise. A request for parental leave by a birth mother must be made in writing at least 4 weeks before the proposed start date.

A birth father and an adopting parent are entitled to up to 37 consecutive weeks of unpaid parental leave. A birth father must begin the leave within a year after the birth of the child, and an adopting parent within a year after the child is placed with the parent.

An initial period of parental leave may be extended up to 5 consecutive weeks if the child requires an additional period of parental care.

An employer may require an employee to provide a doctor's certificate or other evidence that the employee is entitled to the leave or leave extension.

Family Responsibility Leave

An employee is entitled to up to 5 days of unpaid leave each employment year to meet responsibilities related to the care, health or education of any member of the employee's immediate family.

"Employment year" means a year beginning on the date the employee commenced employment.

"Immediate family" means the spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee, and any person who lives with the employee as a member of the employee's family.

Bereavement Leave

An employee is entitled to up to 3 days of unpaid leave on the death of a member of the employee's immediate family. These days do not have to be consecutive, or start on the date of death.

Jury Duty

An employee who is required to attend court as a juror is considered to be on unpaid leave for the period of the jury duty.

Employment Considered Continuous

If an employee is on any of the leaves referred to in this chapter or on jury duty, employment is considered continuous for the purposes of calculating annual vacation and termination entitlements, as well as for pension, medical or other plans of benefit to the employee. An employer must continue to make payments to any such plans unless the employee chooses not to continue with his or her share of the cost of a plan. The employee is also entitled to all increases in wages and benefits that the employee would have received it not on leave.

Conditions of Employment to Remain the Same

Without the employee's written consent, an employer may not terminate an employee, or change a condition of employment, because of a leave or jury duty. When the leave or jury duty ends, an employee must be returned to his or her former position or to a comparable position.

CHAPTER 11

Annual Vacation

Annual Vacation Entitlement

An employee is entitled to an annual vacation of 2 weeks after 12 consecutive months of employment, and 3 weeks after 5 consecutive years of employment. There is no entitlement to take annual vacation in the first year of employment.

An employer must schedule an employee's vacation in periods of one or more weeks unless the employee requests otherwise, and must ensure an employee takes all vacation within 12 months of earning it.

An employer may use a common date for calculating the annual vacation entitlement of all employees so long as no employee's right to an annual vacation or vacation pay is reduced.

An employee's period of consecutive employment is not interrupted by the sale, lease or transfer of a business.

Vacation Pay

After 5 calendar days of employment, an employee is entitled to vacation pay.

In the first 4 years in which an employee is entitled to take annual vacation, the employer must pay vacation pay of at least 4 per cent of all wages paid to the employee in the preceding year. In the fifth and following years of entitlement, the employer must pay vacation pay of at least 6 per cent of all wages paid in the preceding year. Any vacation pay received by an employee is counted as part of the total wages paid in a particular year.

Vacation pay is payable at least 7 days before the start of the annual vacation, or on regular pay days if agreed by the employer and the employee, or by a collective agreement.

An employer cannot reduce an employee's annual vacation or vacation pay because the employee was paid a bonus or sick pay, or was previously given a vacation longer than the minimum. However, these vacation entitlements may be reduced if an employee took annual vacation in advance at the employee's written request.

An employee who quits or is terminated in the first year is entitled to vacation pay of 4% of their total earnings.

Vacation Pay for Piece-rate Farmworkers

If an employee is a farmworker who is paid on a piece-rate basis, vacation pay is included in the piece rate.

CHAPTER 12

Special Clothing (Uniforms)

Special clothing is clothing that identifies the employee as part of the employer's business and is usually the same for all employees, or for a group of employees. Examples are garments that bear the business's logo, or insignia, or clothes in a hue specified by the employer, for example, scarlet blouse or shirt. A general colour does not make a garment special clothing. For example, blue pants are not special clothing, but navy blue ones are. Garments produced by a particular maker or only available through a supplier specified by the employer are special clothing. For example, "Kodiak" jeans are special clothing, but blue jeans are not.

Employers must pay the cost of any special clothing they require their employees to wear, including costs for purchase, cleaning, and maintenance.

A "dress code" is more general in nature than special clothing and is a standard of dress, appropriate to the business in which work is being performed, for example: jacket and tie; no blue jeans, or light shirt, dark slacks. The clothing is usually suitable for use away from that workplace. The employer is not required to provide and maintain clothing needed to meet the dress code.

Certain sectors have a standard look, such as white shirts and black pants in the restaurant sector. These garments do not link an employee to any particular restaurant, or business. Another sector is the medical/dental. That sector tends to wear lightweight garments in soft pastel colours. Special clothing links an employee to a particular business, and creates an image specific to that business as opposed to a sector. Clothes that are commonly worn by employees working in a sector are not special clothing.

Safety apparel, as required by the Workers' Compensation Board, is not considered to be special clothing.

A clothing allowance (that does not meet the cost of clothing), or discount, is not a substitute for the requirement that an employer provide special clothing at no charge to employees.

Special clothing is the property of the employer and must be returned as and when the employer requires.

CHAPTER 13

Termination of Employment

Compensation Eligibility

An employee who is terminated by an employer is eligible for compensation for length of service based on the following formula:

- after 3 months' consecutive employment, 1 week's pay,
- after 1 year, 2 weeks' pay, and
- after 3 years, 1 week's pay for each year of employment to a maximum of 8 years.

A week's pay is calculated by totalling the employee's wages, excluding overtime, earned in the last 8 weeks in which the employee worked normal hours, and dividing this amount by 8. Annual vacation pay is payable on this compensation.

An employee's period of continuous employment is not interrupted by the sale, lease or transfer of a business.

No Compensation Required with Written Notice

No compensation is required if an employer has given an employee advance written notice of termination equal to the number of weeks' pay for which the employee is eligible.

An employer may also give an employee a combination of notice and compensation equal to the number of weeks' pay for which the employee is eligible.

An employee cannot be on vacation, leave, strike or lockout, or be unavailable for work due to medical reasons during the notice period. If employment continues after the notice period ends, the notice is of no effect. Once notice has been given, the employer may not alter any condition of employment, including the wage rate, without the employee's written consent.

No Notice or Compensation Required

An employer is not required to give notice of termination or pay compensation on termination if:

- the employee has not completed 3 months of consecutive employment,
- the employee quit or retired,
- the employee was dismissed for just cause,
- the employee worked on an on-call basis doing temporary assignments which he or she could accept or reject,
- the employee was employed for a definite term,
- the employee was hired for specific work to be completed in 12 months or less,
- it was impossible to perform the work because of some unforeseeable event or circumstance (other than bankruptcy, receivership or insolvency),
- the employee was employed at a construction site by an employer whose principal business is construction,
- the employee refused reasonable alternative employment, or
- the employee was a teacher employed by a board of school trustees.

If a definite term or specific work is extended for at least 3 months past its scheduled completion, the definite term and specific work exceptions described above would not apply.

Temporary Layoff

An employer is not required to give notice of termination or pay compensation if an employee is laid off temporarily.

A temporary layoff becomes a termination when:

- a layoff exceeds 13 weeks in any period of 20 consecutive weeks, or
- a recall period for an employee covered by a collective agreement has been exceeded by more than 24 hours.

A week of layoff is a week in which an employee earns less than 50 per cent of his or her weekly wages at the regular rate, averaged over the previous 8 weeks.

When a temporary layoff becomes a termination, the date of layoff becomes the termination date and the employee becomes entitled to compensation as described above.

A layoff other than a temporary layoff is considered a termination.

Director May Deem Employment Terminated

If an employer substantially alters a condition of employment, the Director may determine that an employee's employment has been terminated. If the Director makes such a determination, the termination provisions of the Act apply.

Group Terminations

Where an employer intends to terminate 50 or more employees at a single location within a period of 2 months, the employer must give written notice of group termination to each employee affected. The employer must also notify the Minister of Skills Development and Labour, and any trade union representing the employees. The length of notice depends on the number of employees to be laid off. If notice is not given or is shorter than required, termination pay in lieu of the deficient portion of the notice must be paid. Group termination requirements are in addition to individual termination requirements, and the two notice periods may not coincide. For further information, please refer to Part 8 of the Act.

Employees Covered by Collective Agreements

Variations of the individual and group termination provisions apply to employees covered by collective agreements. For further information, please refer to Part 8 of the Act.

Other Laws

Employers and employees should be aware that other laws, including the *Human Rights Code* and the common law regarding termination and wrongful dismissal, may apply to a particular termination even in cases where no compensation or notice may be required under the *Employment Standards Act*.

CHAPTER 14

Variances

An employer and the employer's employees may jointly apply to the Director to change or vary the application of the following provisions of the Act:

- a time period specified in the definition of 'temporary layoff' (Section 1)
- paydays (Section 17[1])
- special clothing (Section 25)
- notice of a change in shift (Section 31)
- minimum daily hours (Section 34)
- maximum hours of work (Section 35)
- hours free from work (Section 36)
- overtime wages for employees not on a flexible work schedule (Section 40)
- notice and termination pay requirements for group terminations (Section 64)

A variance may be granted if the Director is satisfied that the requested change is consistent with the intent of the Act, and a majority of affected employees are in favour. The Director may attach conditions to the variance. All variances include an expiry date, but may be renewed on application to the Director. An employer must post a copy of the variance where any affected employee can read it.

The procedure for applying for a variance is set out in Section 30 of the Regulation.

CHAPTER 15

Complaints

Filing a Complaint

The provisions of the *Employment Standards Act* apply to all employees who are subject to provincial standards legislation unless they are excluded by Regulation.

Any person may file a complaint against an employer. All complaints must be in writing. If the complaint is from an employee or former employee, it must be received by a Branch office either while the complainant is employed by the employer or, if employment has ended, within 6 months after the last day of employment. If the complaint is about false representation concerning a job or being charged a fee for being hired, the complaint must be filed within 6 months of the contravention.

Confidentiality

Anyone filing a complaint may request that his or her identity be kept confidential. The complainant's identity may only be disclosed if it is necessary for a proceeding under the Act, or the Director considers disclosure to be in the public interest.

Employee Protection

An employer may not fire or threaten to fire an employee who files a complaint, nor may an employer coerce, intimidate or penalize a person because of a potential or actual complaint, investigation or appeal under the Act.

Investigating Complaints

The Director is required to investigate every complaint filed unless:

- the Act does not apply to the complaint,
- the complaint is frivolous, trivial, or not made in good faith,
- there is not enough evidence to prove the complaint,
- a related proceeding has been commenced before a court, tribunal, arbitrator, or mediator,
- a court, tribunal or arbitrator has made a decision in the matter of the complaint, or
- the dispute that caused the complaint is resolved.

The Director may also conduct investigations without receiving a complaint, and may assist the parties in resolving a complaint or a matter under investigation.

Branch staff may enter workplaces, inspect and remove records, require persons to disclose information, and require the delivery of records.

Determinations and Remedies

Once an investigation is complete, the Director will issue a decision (called a 'determination'), which states whether the Act or Regulation has been contravened and the reasons for the decision. Any person named in a determination must receive a copy of it.

A determination must include the details of any amounts payable and penalties imposed.

If a contravention involves leave, false representations concerning work, or mistreatment because of a complaint or investigation under the Act, the Director may also require an employer to hire or reinstate a person and pay any wages lost by the contravention (or pay the person compensation instead of reinstatement), and pay the person's expenses incurred as a result of the contravention.

If the Director determines that an employee's hours of work are excessive, he may order the employer to reduce the hours. Failure to comply with such an order may result in the employer being required to pay additional overtime. An employer must post a copy of any determination limiting employees' hours of work.

The Director must dismiss a complaint if it is determined that neither the Act nor the Regulation has been violated. The Director may also vary or cancel a determination.

Limits on the Recovery of Wages

An employer may be liable for any unpaid wages that became payable in the 24 months before a complaint was filed or employment was terminated, whichever occurred first. In the case of an investigation without a complaint, an employer may be liable for any unpaid wages that became payable in the 24 months before the Director notified the employer of the investigation. An employer must also pay interest on any unpaid wages.

If an employee has had more than one period of employment with the same employer in the past 24 months, the employer may be liable for unpaid wages only for the most recent period of employment.

Appeals

A person served with a determination has the right to appeal the determination to the Employment Standards Tribunal. An appeal must be in writing and be filed with the Tribunal within 8 days if the determination was personally served, or within 23 days if it was served by registered mail.

A person filing an appeal may ask the Tribunal to suspend a determination during the appeal period. The Tribunal may grant the request if the person pays to the Director either the full amount payable under the determination, or a smaller amount set by the Tribunal. Interest accrues on all wages held in trust.

The Tribunal may cancel, confirm, or vary a determination with or without a hearing, or refer a matter back to the Director. It may also reconsider an order or decision which it has made.

Information on how to file an appeal or contact the Tribunal is available at all Branch offices.

CHAPTER 16

Enforcement Measures and Penalties

The Director can use a variety of measures to enforce compliance with the Act, Regulation, and decisions made by the Director and the Employment Standards Tribunal.

Monetary Penalties

An employer who fails to maintain or produce required records or issue employee wage statements may face a $500 penalty. An employer who repeatedly violates other requirements of the Act may face escalating penalties of up to $500 per employee per infraction. Where a corporation is responsible for the contravention, an employee, officer, director or agent of the corporation who permits the contravention may also be penalized. A detailed description of the requirements of the Act and the prescribed penalties is set out in the Regulation.

Lien for Unpaid Wages

Unpaid wages are a lien, or legal claim, against the property of an employer which takes effect at the time the wages are earned. These liens take priority over all other claims, including a claim of the Provincial Government, except a prior-registered mortgage or debenture against land.

Paying Interest on Unpaid Wages

An employer may be required to pay interest on unpaid wages owing to an employee. Interest is calculated from the date of the employee's termination or the date the complaint was filed, whichever is earlier, to the date of payment. Interest is charged at the prime lending rate of the government's banker.

Demands on Third Parties

If a third party is or will be indebted to a person who owes money because of a determination or order under the Act, the Director may demand that the third party pay all or part of its indebtedness directly to the Director. If the third party does not comply with the demand, the Director may begin collection action directly against the third party.

Court Judgments

A determination of the Director or an order of the Tribunal may be filed at any time in Supreme Court and enforced as a judgment of the Court.

Seizing Assets

The Director may seize personal or business assets of a person required to pay under a determination or order to satisfy the amount owing and the costs of the seizure.

Corporate Officer Liability

An officer or director of a corporation is personally liable for up to 2 months' unpaid wages per employee if the officer or director held office when the wages were earned or were payable.

An officer or director is not liable for:

- compensation for termination or termination pay in the case of bankruptcy, receivership or insolvency,
- vacation pay which became payable after the officer or director left office, or
- money in an employee's time bank after the officer or director left office.

Security to Ensure Compliance

An employer who at any time has contravened a requirement concerning the payment of wages may be required by the Director to post a bond, or to provide an irrevocable letter of credit or other security, to ensure compliance with the Act or Regulation.

Publishing Violators' Names

The Director may compile and publish information about contraventions of the Act and Regulation, including information identifying persons who committed the contraventions.

CHAPTER 17

Glossary of Important Terms

Construction means the construction, renovation, repair or demolition of property or the alteration or improvement of land.

Conditions of employment means all matters and circumstances that in any way affect the employment relationship of employers and employees.

Day means a 24 hour period ending at midnight and 'working day' means a 24-hour period beginning at the start of an employee's shift.

Determination means any decision made by the Director or designate of the Director following an investigation under the *Employment Standards Act*. A determination may be appealed to the Employment Standards Tribunal.

Director means the Director of Employment Standards appointed under the *Public Service Act* and, in relation to a function, duty or power that the Director has, under Section 117 of this Act, delegated to another person, 'Director' means that person.

Domestic worker means a person who:

- is employed at an employer's private residence to provide cooking, cleaning, child care or other prescribed services, and
- resides at the employer's private residence.

Employee includes:

- a person, including a deceased person, receiving or entitled to wages for work performed for another,
- a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- a person being trained by an employer for an employer's business,
- a person on leave from an employer, and
- a person who has a right of recall.

Employer includes a person:

- who has or had control or direction of an employee, or
- who is or was responsible, directly or indirectly, for the employment of an employee.

Employment year means a year beginning on a common date that is used by an employer to calculate family responsibility leave for all employees under Section 52 of the Act, so long as this does not result in a reduction of any employee's rights under that section.

Farm labour contractor means an employer whose employees work, for or under the control or direction of another person, in connection with the planting, cultivating or harvesting of an agricultural product.

Manager means:

- a person whose primary employment duties consist of supervising and directing other employees, or
- a person employed in an executive capacity.

Regular wage means:

- if an employee is paid by the hour, the hourly wage,
- if an employee is paid on a flat rate, piece rate, commission or other incentive basis, the employee's wages in a pay period divided by the employee's total hours of work during that period,
- if an employee is paid a weekly wage, the weekly wage divided by the lesser of the employee's normal or average weekly hours of work,
- if an employee is paid a monthly wage, the monthly wage multiplied by 12 divided by the product of 52 times the lesser of the employee's normal or average weekly hours of work, and
- if the employee is paid a yearly wage, the yearly wage divided by the product of 52 times the lesser of the employee's normal or average weekly hours of work.

Time bank means a time bank established at the request of an employee to allow overtime and statutory holiday pay to be banked and taken as time off work with pay.

Wages includes:

- salaries, commissions or money, paid or payable by an employer to an employee for work,
- money that is paid or payable by an employer as an incentive and relates to hours of work, production or efficiency,
- money, including the amount of any liability under Section 63, required to be paid by an employer to an employee under this Act,
- money required to be paid in accordance with a determination or an order of the Tribunal, and
- in Parts 10 and 11, money required under a contract of employment to be paid, for an employee's benefit, to a fund, insurer or other person,

but does not include:

- gratuities,
- money that is paid at the discretion of the employer and is not related to hours of work, production or efficiency,
- allowances or expenses, and
- penalties.

Week means a period of 7 consecutive days beginning:

- for the purpose of calculating overtime, on Sunday, and
- for any other purpose, on any day.

CHAPTER 18

Frequently Asked Questions

Q. Does the Act require an employer to give coffee breaks?

No. Coffee breaks are given at the discretion of the employer.

Q. Is an employer required to pay for sick leave?

There is no requirement for an employer to give an employee paid sick leave. However, if sick leave is paid or allowed, it may not be deducted at a later date from any other entitlement to a paid holiday, vacation pay, or other wages.

Q. Is an employer required to pay for job orientation, training, or meetings?

If the orientation or training is specific to an employer's business (e.g., how to open the store or cash out) then the employer is required to pay for the training and the employee's time. Where an employer requires an employee's attendance for training on the employee's regular day off, the employee may be eligible for overtime, minimum daily pay etc.

If the training is of a general type that can be used with any employer in that line of business (e.g., driver's licence or First Aid certificate), or is required or sponsored by government, the employer is not required to pay for the training.

An employer is required to pay for an employee's attendance at meetings held by the employer.

Q. Can an employer require an employee to work overtime?

An employer may require an employee to work overtime as long as the employer pays the applicable overtime wage rates, and the hours worked are not excessive or detrimental to the employee's health or safety.

Q. Is an employer required to pay overtime for work performed on a weekend?

Not necessarily. Overtime is payable if the standard daily or weekly hours, or the approved hours of a flexible work scheduled, are exceeded.

Q. Is an employee required to give notice of termination to an employer?

No; however, most employers appreciate this consideration from an employee.

Q. Does the Act permit an employee to work through an annual vacation and be paid for this time as well as receive vacation pay?

No. An employer must ensure that an employee takes his or her annual vacation as time off from work.

Q. Can the Director require an employer to issue a Record of Employment (also known as an ROE or a Separation Certificate) or T-4 form?

No. A Record of Employment is a document issued for Employment Insurance purposes which is a federal government responsibility. An employee should contact a local Human Resources Development Canada Employment Centre for assistance. Revenue Canada Taxation should be contacted for help in obtaining a T-4 form.

Q. What is a manager? Is a manager entitled to overtime and statutory holiday pay?

The Act defines a "manager" as a "person whose primary employment duties include supervising or directing other employees, or a person employed in an executive capacity".

A manager is not entitled to overtime for working more than 8 hours in a day or 40 hours a week, although he or she must be paid for all hours worked. Also, a manager is not entitled to statutory holidays or statutory holiday pay.

For an employee to be considered a manager, that person must have more than just the title of a manager. He or she must exercise managerial authority through independent action and decision-making. Typically, a manager makes final decisions regarding hiring, firing, and employee discipline, authorizes overtime, time off and leave, lays off and recalls employees, alters work processes, and schedules employees for work.

If there are no duties consisting of supervising and directing other employees, and the person is not employed in an executive capacity, then the person is not a manager, regardless of the importance of his or her duties to the operation of the business. If there are no other employees, there is no manager.

Q. Is the time spent getting to and from a worksite considered to be work?

Normally, the trip from home to work is considered to be a commute. No work is performed regardless of who provides the vehicle.

The trip from home to the worksite becomes work when the employee provides a service to the employer by bringing employer-provided tools, equipment, supplies or material to the worksite. The trip is also considered to be work if an employee, at the direction of the employer, brings other employees from their homes or a designated meeting place to the worksite.

Employment Standards Branch Offices

Abbotsford
306-32555 Simon Avenue
V2T 4Y2
Phone: 604 852-5378
Facsimile: 604 852-9580

Burnaby
Deer Lake Centre,
210-4946 Canada Way
V5G 4J6
Phone: 604 660-4946
Facsimile: 604 660-7047

Courtenay
2500 Cliffe Avenue
V9N 5M6
Phone: 250 897-7520
Facsimile: 250 334-1420

Cranbrook
100 Cranbrook Street N.
V1C 3P9
Phone: 250 426-1291
Facsimile: 250 426-1561

Dawson Creek
1201-103rd Avenue
V1G 4J2
Phone: 250 784-2390
Facsimile: 250 784-2394

Duncan
5785 Duncan Street
V9L 5G2
Phone: 250 746-1439
Facsimile: 250 746-1467

Kamloops
220-546 St Paul Street
V2C 5T1
Phone: 250 828-4516
Facsimile: 250 828-4518

Kelowna
107-1664 Richter Street
V1Y 8N3
Phone: 250 861-7404
Facsimile: 250 861-7428

Nanaimo
302-155 Skinner Street
V9R 5E8
Phone: 250 741-5833
Facsimile: 250 741-5832

Nelson
310 Ward Street
V1L 5S4
Phone: 250 354-6550
Facsimile: 250 354-6692

Penticton
103-3547 Skaha Lake Rd
V2A 7K2
Phone: 250 490-8215
Facsimile: 250 490-8299

Port Coquitlam
510-2755 Lougheed Hwy
V3B 5Y9
Phone: 604 927-2240
Facsimile: 604 927-2250

Prince George
1st Floor, 1577-7th Avenue
V2L 3P5
Phone: 250 565-6120
Facsimile: 250 565-7110

Surrey
#101-10475 138th Street
V3T 4K4
Phone: 604 586-4251
Facsimile: 604 586-4249

Terrace
108-3220 Eby Street
V8G 5K8
Phone: 250 638-6525
Facsimile: 250 638-6528

Vancouver
201-865 Hornby Street
V6Z 2G3
Phone: 604 775-1974
Facsimile: 604 775-1983

Victoria
Location:
400-3960 Quadra Street
Phone: 250 952-4738
Facsimile: 250 952-4754

Mailing Address:
PO Box 9571, Stn. Prov Govt
Victoria, BC
V8W 9K1

Administration Office

Location:
1st Floor, 634 Humboldt St
Victoria, BC

Mailing Address:
PO Box 9570, Stn. Prov Govt
Victoria, BC V8W 9K1

Phone: 250 387-3300
Facsimile: 250 356-1886

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